



The State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 25, 2008

The Honorable Judith T. Spang, Chairman  
Resources, Recreation, and Development  
Legislative Office Building, Room 305  
Concord, NH 03301

**Re: SB 328, relative to civil forfeitures for certain waste disposal violations**

Dear Chairman Spang:

Thank you for the opportunity to testify on SB 328, relative to civil forfeitures for certain waste disposal violations, which was requested by the Department of Justice ("DOJ"). The Department of Environmental Services ("DES") supports this bill.

Individual sewage disposal systems ("septic systems") are regulated under RSA 485-A:29-44 and the rules adopted pursuant thereto, Env-Wq 1000. Most people who rely on septic systems understand the importance of maintaining them in a safe and sanitary condition. Failed systems jeopardize public health and the safety and well-being of others living in proximity, in addition to harming, or threatening harm to, the environment. When DES becomes aware of a failed system, the primary goal of any action taken is to ensure that the septic system is repaired or replaced or, if possible, that the structure served by the system is connected to a municipal sewer. However, over the years DES has worked with the DOJ on several cases involving property owners who simply will not repair or replace a failed septic system. In cases where a property owner has resources available to address the situation but chooses not to, however, monetary penalties may be appropriate.

Under the present statute, the maximum civil forfeiture that can be levied by a court is \$5,000, regardless of how much harm the violation caused or threatened and regardless of how long the violation has continued. The \$5,000 penalty was established in 1974, when the cost to repair or replace a septic system was considerably less than it is now, and has not been increased since. Facing a maximum penalty of \$5,000 may well be preferable to spending more than that to correct a violation of RSA 485-A:29-44. The proposed bill would provide greater incentive for correcting violations sooner both by increasing the maximum penalty and by making each day of an on-going violation a separate violation. This change also would make the civil penalty provisions for this program more consistent with civil penalties/forfeitures for other programs implemented by DES.

Thank you again for the opportunity to express our support. If you have any questions, please contact Assistant Commissioner Michael Walls at 271-8806 ([michael.walls@des.nh.gov](mailto:michael.walls@des.nh.gov)).

Sincerely,

*Michael Walls, Asst. Comm.*  
for  
Thomas S. Burack  
Commissioner

cc: Senators Cilley, Reynolds, and Clegg  
Representatives Wall, DiFruscia, and Bettencourt